LIM HUNG TONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Winslow J.) July 31, 1964]

[Singapore — Magistrate's Appeal No. 248 of 1963]

Criminal Procedure — Conviction based on uncorroborated testimony of sole witness of infamous character — District Judge recording no reasons for belief or disbelief — Whether conviction should stand.

Women's Charter, 1961 s. 131 — Charge of knowingly living on immoral earning of wife's prostitution — Evidence of self-admitted prostitute.

The appellant was convicted by the District Court under section 131 of the Women's Charter for knowingly living on the immoral earnings of his wife's prostitution. The sole evidence against the appellant was that of his wife, a self-confessed prostitute. In his grounds of judgment, the learned district judge did not state the reasons for his belief or disbelief of the wife's evidence.

Held: in a case like this where corroboration is normally expected of the testimony of an only witness who is admittedly of tainted and infamous character it is essential, that the district judge should state his reasons for his belief or disbelief where no corroboration exists.

Obiter: The presumption in section 131 of the Women's Charter would appear not to apply to married people who are living together.

Cases referred to:—

(1) *Ee Choon Bok & Anor.* v. *Public Prosecutor* [1951] M.L.J. 183.

(2) *R.* v. *Lee Whoy Kwoi* [1937] M.L.J. 240.

MAGISTRATE'S CRIMINAL APPEAL.

S. K. Lee for the appellant.

Tan Kim Seng (Deputy Public Prosecutor) for the respondent.

Winslow J.: The appellant was charged under section 131 of the Women's Charter, 1961 with knowingly living on the immoral earnings of his wife's prostitution between October 1958 and April 1963 when she left the matrimonial home and brought a complaint to the Social Welfare Department against the appellant. The sole evidence against the appellant was that of his wife who was a self-admitted prostitute but it is the appellant's contention that he did not know until April 1963 that she was in fact a prostitute.

I have decided that the appeal should be allowed, not because I think that the learned district judge was necessarily wrong in his conclusions but because, in a case like this, where corroboration is normally expected of the testimony of an only witness who is admittedly of tainted and infamous character, it is essential that the learned district judge should state reasons for his belief or disbelief where no corroboration exists.

I realise that in the case of *Ee Choon Bok & Anor.* v. *Public Prosecutor*,(1) Abbott J. held, against the opinion of two brother judges of co-ordinate jurisdiction, that in cases where the credibility of a witness is concerned, it is sufficient for it to be recorded in the grounds of decision that the witness was believed or disbelieved. He however went on to qualify this opinion by saying that the reasons for such belief or disbelief should be given in any case where it is considered that it may be helpful to the appellate court.

In my opinion, this was such a case, particularly where there was no corroboration of the testimony of the wife. Had this been a case which did not involve a tainted witness I would probably have been disinclined to interfere with the findings of the learned district judge.

In particular there was evidence that the wife-cum-prostitute was found at 4 o'clock in the morning in April 1963 in dubious company by her husband who took her to task about this association as well as her association with a man called Ah Fatt. An altercation arose in the course of which the appellant forbade his wife to continue her association with Ah Fatt and slapped her. The wife, in the course of her evidence, admitted these events and also gave evidence that she had been assaulted by the appellant on a number of occasions in the past when she had failed to give him money to pay his gambling debts. She said, however, that she had made no complaint to anyone about these previous assaults.

It was in April 1963 after the incident over Ah Fatt that she decided to report the matter to the authorities and she duly made her appearance before an officer of the Social Welfare Department where she asked for a divorce and the custody of her two daughters. It seems to me that this was all that she wanted at that stage, incensed as she was over her husband's objections to her association with Ah Fatt. Although there is no evidence of this it would appear that the officers of the Social Welfare Department must have investigated her past life-history and hence the present prosecution.

Horne J. held in *Rex* v. *Lee Whoy Kwoi*,(2) that corroboration in cases like these should be required where a case is being heard by a single judge or magistrate. He later qualified this oral opinion in a written judgment where he held that it was difficult for a single judge or magistrate to act on the uncorroborated testimony of such a witness.

Whilst it is in my opinion not essential, though desirable, that there should be corroboration in each and every case like this, it is important that a district judge or magistrate should record his reasons for accepting the evidence of an uncorroborated witness, particularly where her credibility is in question.

Assuming that the learned district judge was justified in calling upon the appellant for his

defence and, on this I need make no further observation having regard to the conclusion at which I have arrived, it should be noted that the appellant himself gave evidence and he called two witnesses, one of whom was his daughter and the other his employer.

The evidence of the appellant was rejected without any grounds therefor and the evidence of the two witnesses was totally ignored. In fact the learned district judge did not make any finding as to whether he accepted their evidence or not. The daughter gave evidence exonerating her father. The employer gave evidence showing that the appellant was in receipt of an income of his own. In the absence of any finding as to these two witnesses it is impossible to say that a reasonable doubt was not created. I do not think I am entitled to assume that the evidence of the daughter and the employer was rejected.

Much as I dislike interfering with findings of fact by the courts below, this is one of those cases where, in my opinion, it can be said that the verdict is unreasonable.

In conclusion, I should like to refer to an interesting proposition which was advanced by counsel for the appellant, namely, that the presumption in section 131 of the Women's Charter to the effect that a person who is proved to be living with a prostitute shall be deemed, until the contrary is proved, to be knowingly living on her immoral earnings, does not apply in the case of married people. The presumption was never referred to by the learned district judge in his grounds of decision although the learned deputy public prosecutor during the argument on appeal did make a somewhat faint-hearted effort to rely on it. Whilst I consider it unnecessary for me to express an opinion on this point, having regard to the fact that I have decided to allow the appeal on other grounds, I am of the opinion that the contention of counsel for the appellant is a tenable one, having regard to the language of the subsection concerned.

The appeal is accordingly allowed, the conviction set aside and the sentence quashed.

Appeal allowed.

RE SINGAPORE INDUSTRIAL WORKERS UNION

[O.C.J. (Choor Singh J.) August 3, 1964]

[Singapore — Originating Summons No. 95 of 1964]

Trade Union — Rules and constitution — Interpretation — Union open to workers employed in "private undertaking or industry" — Employer a "non-profit making organisation" — Whether employees of, eligible to union membership — Application under O. LII, r. 5(1) of the Rules of the High Court, 1934.

Rule 3(a) of the Rules and Constitution of the Singapore Industrial Workers Union provides that membership of the union is open to "all workers regardless of race and sex over the age of 18, who are employed in any private undertaking or industry in Singapore". On an application for a ruling on the true construction of the rule and whether pursuant thereto the employees of the Automobile Association of Singapore are eligible for union membership,

Held: the Automobile Association of Singapore is not an industry but it is a private undertaking within the meaning of that rule. The fact that it is non-profit making is irrelevant. Its employees are therefore eligible for membership of the union.

APPLICATION for construction of Union Rules.

T. T. Rajah for the applicant.

Lim Chor Pee (Crown Counsel) for the respondent.

Choor Singh J.: This was an application by the Singapore Industrial Workers Union for a ruling from the court on the true construction of rules 2(a) and 3(a) of the Rules and Constitution of the Union and whether pursuant to the said Rules, the employees of the Automobile Association of Singapore are eligible for membership of the union.

The Singapore Industrial Workers Union is a trade union registered under the Trade Unions Ordinance (Cap. 154) of Singapore. Rules 2(a) and 3(a) of the union's Rules and Constitution provide as follows:—

> 2(a) The objects of this union shall be to secure the complete organisation and unity of all workers in private employment in Singapore and to promote the industrial, social and intellectual interests of the members.
>
> 3(a) This union is open to all workers, regardless of race and sex, over the age of 18, who are employed in any private undertaking or industry in Singapore.

The Automobile Association of Singapore is a society registered under the Societies Ordinance (Cap. 228) of Singapore. The association is a non-profit making organisation run by and for its members. The facilities provided by the association for its members are:—

> (a) the provision of radio road service to assist members whose cars suffer unexpected mechanical breakdown in Singapore.
>
> (b) Towage and crane-lifting services within certain financial limits.
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> (c) Up-country breakdown service.
>
> (d) Technical service.
>
> (e) Free legal advice and defence.
>
> (f) Insurance.
>
> (g) Towing and shipping services.
>
> (h) Motoring documents.
>
> (i) Reciprocal service — interstate and overseas.
>
> (j) Driver hire service.
>
> (k) Quarterly journal.
>
> (l) Reminders and renewals of driving licences, vehicle licences, and transfer of vehicle ownership.
>
> (m) maps and other touring information.

The association employs a secretary, manager, accountant, clerks, typists, peons, radio-telephone operators, mechanics and drivers.